IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1815 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD.

Versus

NATHUBHAI JIVABHAI SUMARA

Appearance:

MR DEEPAK M SHAH for Appellant

RULE SERVED for Respondents No. 2,5

MS AVANI S MEHTA for Respondent No. 3

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 27/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the appellant and learned counsel for the respondent no.3. Other respondents are absent though served.

2. This is an appeal under section 173 of the Motor Vehicles Act, 1988, at the instance of the Oriental Insurance Company, which was the insurer of the jeep which was involved in the accident. Respondent no.3 was the insurer of the truck which was also involved in the accident.

3. The short contention raised before us is that although the Tribunal has, on a total assessment and evaluation of the evidence on record, has recorded a clear and unambiguous finding of fact to the effect that the driver of the jeep was not at all responsible for the accident, and that the driver of the truck was entirely and totally responsible for the accident, the Tribunal has through error and oversight passed the award jointly and severely against the appellant Insurance Company (as the insurer of the jeep). On the facts of the case and on a perusal of the impugned judgement, we find that the Tribunal has in para 7 of the judgement clearly recorded a finding that it was only the driver of the truck which was responsible for the accident. Since this is a finding which is not in dispute, it would obviously follow that the driver of the jeep was not at all negligent and consequently no liability would attach to the owner of the jeep nor the insurer of the jeep i.e. appellant.

4. Obviously, therefore, in the final order passed in the said judgement resulting in the impugned award, when the Tribunal observed that the claimant is entitled to recover the specified amount of compensation, "from all the opponents jointly and severally" this is clearly an error committed by the Tribunal, either through oversight, inadvertence or perhaps on account of a ministerial error. In any case it cannot be disputed and we accordingly hold that the impugned award is not in consonance with the findings of fact recorded in the judgement. Consequently we hold that the appellant Insurance Company is not liable to satisfy the award passed in favour of the first respondent-original claimant. We are also required to hold that the owner of the jeep viz. respondent no.4, and the driver of the jeep are is also not liable to pay compensation to the first respondent-original claimant. This consequential

finding and direction is recorded by virtue of the powers of the appellate court under Order 41, Rule 33 CPC.

5. This appeal is, therefore, allowed with no order as to costs.

6. It is clarified that the impugned award is modified only to the aforesaid extent and the rest of the award stands confirmed. Decree accordingly. Direct service permitted.

*****

ar